

AMENDED IN SENATE MAY 1, 2012  
AMENDED IN SENATE APRIL 12, 2012  
AMENDED IN SENATE MARCH 28, 2012

**SENATE BILL**

**No. 1170**

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**Introduced by Senator Leno**

**(Coauthors: Senators *Alquist*, Anderson, Calderon, Corbett, Correa, Gaines, Lieu, Lowenthal, Price, Strickland, and Wyland)**

**(Coauthors: Assembly Members Chesbro, Huffman, Wieckowski, Williams, and Yamada)**

February 22, 2012

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An act to amend Section 1770 of the Civil Code, and to amend Sections 787; and 789.10 of, and to add Section 785.4 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1170, as amended, Leno. Senior insurance.

(1) Existing law makes it unlawful to engage in specified practices, unfair methods of competition, and unfair or deceptive acts or practices in a transaction intended to result or that results in the sale or lease of goods or services, including making false or misleading statements concerning the existence of price reductions, or the home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for purposes of paying for home improvements. A consumer who suffers damages as a result of the use or employment of the prohibited acts or practices may bring an action to recover civil damages of at least \$1,000, and, if the victim is a senior citizen and the trier of fact makes specified findings, including that the consumer has suffered substantial physical, emotional, or economic

damage resulting from the defendant's conduct, to recover an additional amount of up to \$5,000.

This bill would expand that provision to include advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include a statement that the person disseminating the statement is not authorized to file an initial application for veterans' benefits or that the event is not sponsored by or affiliated with specified veterans' organizations, including the United States Department of Veterans Affairs. The bill would also make a conforming change.

(2) Existing law provides that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

This bill would make it unlawful for an insurance agent who is not licensed as an attorney to deliver to a person who is 65 years of age or older, or for an insurance agent who is licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, except as specified.

(3) Existing law requires any person who meets with a senior in the senior's home to deliver a specified notice to the senior in writing and in 14-point type no less than 24 hours prior to that individual's initial meeting in the senior's home.

This bill would additionally require the notice to be delivered no more than 14 days prior to the meeting. The bill would also require that the notice be a stand-alone document in 16-point, rather than 14-point, type, that the notice include specified information regarding the agent, including his or her full name and license number, and that the notice include a specified statement.

(4) Existing law sets certain standards with regard to any advertisement, as defined, or other device designed to produce leads based on a response from a potential insured that is directed to a person 65 years of age or older, including, but not limited to, disclosing certain information, not using certain language, names, letters, or symbols, and not using specified deceptive or misleading practices and materials.

This bill would change the definition of advertisement to also include worksheets, questionnaires, or other materials designed to collect personal or financial information about a prospective insured or

annuitant. The bill would also add veterans organizations or agencies and the United States Department of Veterans Affairs to the list of those entities that cannot be used in specified deceptive or misleading advertising practices and materials.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1770 of the Civil Code is amended to  
2 read:  
3 1770. (a) The following unfair methods of competition and  
4 unfair or deceptive acts or practices undertaken by any person in  
5 a transaction intended to result or which results in the sale or lease  
6 of goods or services to any consumer are unlawful:  
7 (1) Passing off goods or services as those of another.  
8 (2) Misrepresenting the source, sponsorship, approval, or  
9 certification of goods or services.  
10 (3) Misrepresenting the affiliation, connection, or association  
11 with, or certification by, another.  
12 (4) Using deceptive representations or designations of  
13 geographic origin in connection with goods or services.  
14 (5) Representing that goods or services have sponsorship,  
15 approval, characteristics, ingredients, uses, benefits, or quantities  
16 which they do not have or that a person has a sponsorship,  
17 approval, status, affiliation, or connection which he or she does  
18 not have.  
19 (6) Representing that goods are original or new if they have  
20 deteriorated unreasonably or are altered, reconditioned, reclaimed,  
21 used, or secondhand.  
22 (7) Representing that goods or services are of a particular  
23 standard, quality, or grade, or that goods are of a particular style  
24 or model, if they are of another.  
25 (8) Disparaging the goods, services, or business of another by  
26 false or misleading representation of fact.  
27 (9) Advertising goods or services with intent not to sell them  
28 as advertised.  
29 (10) Advertising goods or services with intent not to supply  
30 reasonably expectable demand, unless the advertisement discloses  
31 a limitation of quantity.

1 (11) Advertising furniture without clearly indicating that it is  
2 unassembled if that is the case.

3 (12) Advertising the price of unassembled furniture without  
4 clearly indicating the assembled price of that furniture if the same  
5 furniture is available assembled from the seller.

6 (13) Making false or misleading statements of fact concerning  
7 reasons for, existence of, or amounts of price reductions.

8 (14) Representing that a transaction confers or involves rights,  
9 remedies, or obligations which it does not have or involve, or  
10 which are prohibited by law.

11 (15) Representing that a part, replacement, or repair service is  
12 needed when it is not.

13 (16) Representing that the subject of a transaction has been  
14 supplied in accordance with a previous representation when it has  
15 not.

16 (17) Representing that the consumer will receive a rebate,  
17 discount, or other economic benefit, if the earning of the benefit  
18 is contingent on an event to occur subsequent to the consummation  
19 of the transaction.

20 (18) Misrepresenting the authority of a salesperson,  
21 representative, or agent to negotiate the final terms of a transaction  
22 with a consumer.

23 (19) Inserting an unconscionable provision in the contract.

24 (20) Advertising that a product is being offered at a specific  
25 price plus a specific percentage of that price unless (A) the total  
26 price is set forth in the advertisement, which may include, but is  
27 not limited to, shelf tags, displays, and media advertising, in a size  
28 larger than any other price in that advertisement, and (B) the  
29 specific price plus a specific percentage of that price represents a  
30 markup from the seller's costs or from the wholesale price of the  
31 product. This subdivision shall not apply to in-store advertising  
32 by businesses which are open only to members or cooperative  
33 organizations organized pursuant to Division 3 (commencing with  
34 Section 12000) of Title 1 of the Corporations Code where more  
35 than 50 percent of purchases are made at the specific price set forth  
36 in the advertisement.

37 (21) Selling or leasing goods in violation of Chapter 4  
38 (commencing with Section 1797.8) of Title 1.7.

39 (22) (A) Disseminating an unsolicited prerecorded message by  
40 telephone without an unrecorded, natural voice first informing the

1 person answering the telephone of the name of the caller or the  
2 organization being represented, and either the address or the  
3 telephone number of the caller, and without obtaining the consent  
4 of that person to listen to the prerecorded message.

5 (B) This subdivision does not apply to a message disseminated  
6 to a business associate, customer, or other person having an  
7 established relationship with the person or organization making  
8 the call, to a call for the purpose of collecting an existing  
9 obligation, or to any call generated at the request of the recipient.

10 (23) The home solicitation, as defined in subdivision (h) of  
11 Section 1761, of a consumer who is a senior citizen where a loan  
12 is made encumbering the primary residence of that consumer for  
13 the purposes of paying for home improvements and where the  
14 transaction is part of a pattern or practice in violation of either  
15 subsection (h) or (i) of Section 1639 of Title 15 of the United States  
16 Code or paragraph (e) of Section 226.32 of Title 12 of the Code  
17 of Federal Regulations.

18 A third party shall not be liable under this subdivision unless  
19 (A) there was an agency relationship between the party who  
20 engaged in home solicitation and the third party or (B) the third  
21 party had actual knowledge of, or participated in, the unfair or  
22 deceptive transaction. A third party who is a holder in due course  
23 under a home solicitation transaction shall not be liable under this  
24 subdivision.

25 (24) (A) Charging or receiving an unreasonable fee to prepare,  
26 aid, or advise any prospective applicant, applicant, or recipient in  
27 the procurement, maintenance, or securing of public social services.

28 (B) For purposes of this paragraph, the following definitions  
29 shall apply:

30 (i) "Public social services" means those activities and functions  
31 of state and local government administered or supervised by the  
32 State Department of Health Care Services, the State Department  
33 of Public Health, or the State Department of Social Services, and  
34 involved in providing aid or services, or both, including health  
35 care services, and medical assistance, to those persons who,  
36 because of their economic circumstances or social condition, are  
37 in need of that aid or those services and may benefit from them.

38 (ii) "Public social services" also includes activities and functions  
39 administered or supervised by the United States Department of  
40 Veterans Affairs or the California Department of Veterans Affairs

1 involved in providing aid or services, or both, to veterans, including  
2 pension benefits.

3 (iii) “Unreasonable fee” means a fee that is exorbitant and  
4 disproportionate to the services performed. Factors to be  
5 considered, when appropriate, in determining the reasonableness  
6 of a fee, are based on the circumstances existing at the time of the  
7 service and shall include, but not be limited to, all of the following:

8 (I) The time and effort required.

9 (II) The novelty and difficulty of the services.

10 (III) The skill required to perform the services.

11 (IV) The nature and length of the professional relationship.

12 (V) The experience, reputation, and ability of the person  
13 providing the services.

14 (C) This paragraph shall not apply to attorneys licensed to  
15 practice law in California, who are subject to the California Rules  
16 of Professional Conduct and to the mandatory fee arbitration  
17 provisions of Article 13 (commencing with Section 6200) of  
18 Chapter 4 of Division 3 of the Business and Professions Code,  
19 when the fees charged or received are for providing representation  
20 in administrative agency appeal proceedings or court proceedings  
21 for purposes of procuring, maintaining, or securing public social  
22 services on behalf of a person or group of persons.

23 (25) (A) Advertising or promoting any event, presentation,  
24 seminar, workshop, or other public gathering regarding veterans’  
25 benefits or entitlements that does not include the following  
26 statement in the same type size and font as the term “veteran” or  
27 any variation of that term:

28 (i) “I am not authorized to file an initial application for Veterans’  
29 Aid and Attendance benefits on your behalf, or to represent you  
30 before the Board of Veterans’ Appeals within the United States  
31 Department of Veterans Affairs in any proceeding on any matter,  
32 including an application for such benefits. It would be illegal for  
33 me to accept a fee for preparing that application on your behalf.”  
34 The requirements of this clause do not apply to a person licensed  
35 to act as an agent or attorney in proceedings before the Agency of  
36 Original Jurisdiction and the Board of Veterans’ Appeals within  
37 the United States Department of Veterans Affairs when that person  
38 is offering those services at the advertised event.

39 (ii) The statement in clause (i) shall also be disseminated, both  
40 orally and in writing, at the beginning of any event, presentation,

1 seminar, workshop, or public gathering regarding veterans' benefits  
2 or entitlements.

3 (B) Advertising or promoting any event, presentation, seminar,  
4 workshop, or other public gathering regarding veterans' benefits  
5 or entitlements which is not sponsored by, or affiliated with, the  
6 United States Department of Veterans Affairs, the California  
7 Department of Veterans Affairs, or any other congressionally  
8 chartered or recognized organization of honorably discharged  
9 members of the Armed Forces of the United States, or any of their  
10 auxiliaries that does not include the following statement, in the  
11 same type size and font as the term "veteran" or the variation of  
12 that term:

13  
14 "This event is not sponsored by, or affiliated with, the United  
15 States Department of Veterans Affairs, the California Department  
16 of Veterans Affairs, or any other congressionally chartered or  
17 recognized organization of honorably discharged members of the  
18 Armed Forces of the United States, or any of their auxiliaries.  
19 None of the insurance products promoted at this sales event are  
20 endorsed by those organizations, all of which offer free advice to  
21 veterans about how to qualify and apply for benefits."

22  
23 (i) The statement in this subparagraph shall be disseminated,  
24 both orally and in writing, at the beginning of any event,  
25 presentation, seminar, workshop, or public gathering regarding  
26 veterans' benefits or entitlements.

27 (ii) The requirements of this subparagraph shall not apply in a  
28 case where the United States Department of Veterans Affairs, the  
29 California Department of Veterans Affairs, or other congressionally  
30 chartered or recognized organization of honorably discharged  
31 members of the Armed Forces of the United States, or any of their  
32 auxiliaries have granted written permission to the advertiser or  
33 promoter for the use of its name, symbol, or insignia to advertise  
34 or promote the event, presentation, seminar, workshop, or other  
35 public gathering.

36 (b) (1) It is an unfair or deceptive act or practice for a mortgage  
37 broker or lender, directly or indirectly, to use a home improvement  
38 contractor to negotiate the terms of any loan that is secured,  
39 whether in whole or in part, by the residence of the borrower and  
40 which is used to finance a home improvement contract or any

1 portion thereof. For purposes of this subdivision, “mortgage broker  
2 or lender” includes a finance lender licensed pursuant to the  
3 California Finance Lenders Law (Division 9 (commencing with  
4 Section 22000) of the Financial Code), a residential mortgage  
5 lender licensed pursuant to the California Residential Mortgage  
6 Lending Act (Division 20 (commencing with Section 50000) of  
7 the Financial Code), or a real estate broker licensed under the Real  
8 Estate Law (Division 4 (commencing with Section 10000) of the  
9 Business and Professions Code).

10 (2) This section shall not be construed to either authorize or  
11 prohibit a home improvement contractor from referring a consumer  
12 to a mortgage broker or lender by this subdivision. However, a  
13 home improvement contractor may refer a consumer to a mortgage  
14 lender or broker if that referral does not violate Section 7157 of  
15 the Business and Professions Code or any other provision of law.  
16 A mortgage lender or broker may purchase an executed home  
17 improvement contract if that purchase does not violate Section  
18 7157 of the Business and Professions Code or any other provision  
19 of law. Nothing in this paragraph shall have any effect on the  
20 application of Chapter 1 (commencing with Section 1801) of Title  
21 2 to a home improvement transaction or the financing thereof.

22 SEC. 2. Section 785.4 is added to the Insurance Code, to read:

23 785.4. (a) It shall be unlawful for any insurance agent who is  
24 not licensed as an attorney to deliver to a person who is 65 years  
25 of age or older, a living trust or other legal document, other than  
26 an insurance contract or other insurance product document, if a  
27 purpose of the delivery is to sell an insurance product.

28 (b) It shall be unlawful for any insurance agent who is licensed  
29 as an attorney to deliver to a person who is 65 years of age or older,  
30 a living trust or other legal document, other than an insurance  
31 contract or other insurance product document, unless the insurance  
32 agent complies with Section 6175.3 of the Business and Professions  
33 Code.

34 SEC. 3. Section 787 of the Insurance Code is amended to read:

35 787. Any advertisement or other device designed to produce  
36 leads based on a response from a potential insured that is directed  
37 towards persons 65 years of age or older shall prominently disclose  
38 that an agent may contact the applicant if that is the fact. In  
39 addition, an agent who makes contact with a person as a result of



1 acquiring that person's name from a lead generating device shall  
2 disclose that fact in the initial contact with the person.

3 (a) An insurer, agent, broker, solicitor, or other person or other  
4 entity shall not solicit persons 65 years of age and older in this  
5 state for the purchase of disability insurance, life insurance, or  
6 annuities through the use of a true name or fictitious name that is  
7 deceptive or misleading with regard to the status, character, or  
8 proprietary or representative capacity of the entity or person, or  
9 to the true purpose of the advertisement.

10 (b) For the purposes of this section, an advertisement includes  
11 envelopes, stationery, business cards, worksheets, questionnaires,  
12 or other materials designed to describe and encourage the purchase  
13 of a policy or certificate of disability insurance, life insurance, or  
14 an annuity, or to collect personal or financial information about a  
15 prospective insured or purchaser of an annuity.

16 (c) Advertisements shall not employ words, letters, initials,  
17 symbols, or other devices that are so similar to those used by  
18 governmental agencies, a nonprofit or charitable institution,  
19 veterans organization or agency, senior organization, or other  
20 insurer that they could have the capacity or tendency to mislead  
21 the public. Examples of misleading materials include, but are not  
22 limited to, those which imply any of the following:

23 (1) The advertised coverages are somehow provided by or are  
24 endorsed by any governmental agencies, nonprofit or charitable  
25 institutions, veterans organizations or agencies, or senior  
26 organizations.

27 (2) The advertiser is the same as, is connected with, or is  
28 endorsed by governmental agencies, nonprofit or charitable  
29 institutions, veterans organizations or agencies, or senior  
30 organizations.

31 (d) An advertisement may not use the name of a state or political  
32 subdivision thereof in a policy name or description.

33 (e) An advertisement may not use any name, service mark,  
34 slogan, symbol, or any device in any manner that implies that the  
35 insurer, or the policy or certificate advertised, or that any agency  
36 that may call upon the consumer in response to the advertisement,  
37 is connected with a governmental agency, such as the federal Social  
38 Security Administration or the United States Department of  
39 Veterans Affairs.

1 (f) An advertisement may not imply that the reader may lose a  
2 right, or privilege, or benefits under federal, state, or local law if  
3 he or she fails to respond to the advertisement.

4 (g) An insurer, agent, broker, or other entity may not use an  
5 address so as to mislead or deceive as to the true identity, location,  
6 or licensing status of the insurer, agent, broker, or other entity.

7 (h) An insurer may not use, in the trade name of its insurance  
8 policy or certificate, any terminology or words so similar to the  
9 name of a governmental agency, governmental program, or  
10 veterans organization or agency as to have the capacity or the  
11 tendency to confuse, deceive, or mislead a prospective purchaser.

12 (i) All advertisements used by agents, producers, brokers,  
13 solicitors, or other persons for a policy of an insurer shall have  
14 written approval of the insurer before they may be used.

15 (j) An insurer, agent, broker, or other entity may not solicit a  
16 particular class by use of advertisements which state or imply that  
17 the occupational or other status as members of the class entitles  
18 them to reduced rates on a group or other basis when, in fact, the  
19 policy or certificate being advertised is sold on an individual basis  
20 at regular rates.

21 (k) In addition to any other prohibition on untrue, deceptive, or  
22 misleading advertisements, no advertisement for an event where  
23 insurance products will be offered for sale at, or as a result of, the  
24 event may use the terms “seminar,” “class,” “informational  
25 meeting,” “benefits assistance,” “qualification information,” or  
26 substantially equivalent terms to characterize the purpose of the  
27 public gathering or event unless it adds the words “and insurance  
28 sales presentation” immediately following those terms in the same  
29 type size and font as those terms.

30 (l) Any advertisement for an event, presentation, seminar,  
31 workshop, or other public gathering regarding veterans’ benefits  
32 or entitlements is required to comply with the requirements of  
33 paragraph (25) of subdivision (a) of Section 1770 of the Civil  
34 Code.

35 SEC. 4. Section 789.10 of the Insurance Code is amended to  
36 read:

37 789.10. (a) This section applies to the sale, offering for sale,  
38 or generation of leads for the sale of life insurance, including  
39 annuities, to senior insureds or prospective insureds by any person.

(b) A person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours and no more than 14 days prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be a stand-alone document, with the appropriate information inserted and without any attachments. It shall be written in ~~bold~~ 16-point *bold* type and include all of the following, but no other, information:

(1) The agent's full name as it appears on his or her California insurance license.

(2) The agent's license number.

(3) The agent's mailing address and telephone number listed on his or her California insurance license.

(4) The following disclosure:

(A) "I am a licensed insurance agent. My purpose for coming to your home is to sell, discuss, and/or deliver one of the following [indicate all that apply]:

( ) Life insurance, including annuities.

( ) Other insurance products [specify]: \_\_\_\_\_.

(B) You have the right to have other persons present at the meeting, including family members, financial advisors, or attorneys.

(C) You have the right to end the meeting at any time.

(D) You have the right to contact the Department of Insurance for information, or to file a complaint. [The notice shall include the consumer assistance telephone numbers at the department]

(E) The following individuals will be coming to your home: [list all attendees, and insurance license information, if applicable]"

(c) Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a followup visit to sell insurance, if that is the case, and state all of the following information:

(1) The name and titles of all persons arriving at the senior's home.

(2) The name of the insurer represented by the person, if known.

1 (d) Each person attending a meeting with a senior shall provide  
2 the senior with a business card or other written identification stating  
3 the person's name, business address, telephone number, and any  
4 insurance license number.

5 (e) The persons attending a meeting with a senior shall end all  
6 discussions and leave the home of the senior immediately after  
7 being asked to leave by the senior.

8 (f) A person may not solicit a sale or order for the sale of an  
9 annuity or life insurance policy at the residence of a senior, in  
10 person or by telephone, by using any plan, scheme, or ruse that  
11 misrepresents the true status or mission of the contact.